



National Aeronautics and
Space Administration

Principal Center for Regulatory Risk Analysis and Communication

REGULATORY ALERT

EPA Proposes Revisions to the Definition of Solid Waste

This information is provided as a service of NASA's Principal Center for Regulatory Risk Analysis and Communication (RRAC PC) to inform you of regulatory developments. If you have further questions and/or need assistance with this matter, please contact Sharon Scroggins/MSFC (256.544.7932, sharon.scroggins@nasa.gov).

Introduction

The U.S. Environmental Protection Agency (EPA) published a supplemental proposal on 26 March 2007 in the *Federal Register* (FR) ([72 FR 14172](#)) that would revise the definition of solid waste to exclude certain hazardous secondary materials from regulation under Subtitle C of the Resource Conservation and Recovery Act (RCRA). EPA also is requesting comments on regulatory factors to be used to determine whether recycling of hazardous secondary materials is legitimate. The purpose of this proposal is to encourage safe, environmentally sound recycling and resource conservation and to respond to several court decisions concerning the definition of solid waste. Comments on the supplemental proposal are due to EPA by 25 May 2007.

Background

On 28 October 2003, EPA published proposed revisions to the definition of solid waste in the FR ([68 FR 61558](#)). The 2003 proposal provided an exclusion from the definition of solid waste for hazardous secondary materials, which are generated and reclaimed in a continuous process within the same industry. EPA received comments disagreeing with this approach and is incorporating the comments into the new proposal and restructuring the approach of the 2003 proposed rule.

Summary of the Proposed Rule

The proposed rule includes exclusions from the definition of solid waste for secondary hazardous materials that are:

- Generated and reclaimed by the same generator in non-land-based units (tanks, containers, containment buildings)
- Legitimately reclaimed under the control of the generator in land-based units (surface impoundments, waste piles)
- Generated and transferred to another company for reclamation under specific conditions
- Deemed non-wastes by EPA through a case-by-case petition process

The proposal also defines legitimate recycling activities to distinguish between these activities and those that are considered hazardous waste treatment, storage, and disposal activities. To be legitimately recycled, the material must provide a useful contribution to the recycling process, and recycling must make a valuable new product.

EPA also is proposing to include a petition process for obtaining a case-specific, non-waste determination for certain hazardous secondary materials that are recycled. This process would allow a petitioner to receive a formal determination from EPA that its hazardous secondary material is clearly not “discarded” and therefore is not a solid waste.

No changes are proposed for recycled materials that are: 1) considered inherently waste-like; 2) used in a manner constituting disposal; or 3) burned for energy recovery. Any currently regulated material managed in these ways must still comply with the federal hazardous waste regulations.

Potential Impact to NASA Centers

National Aeronautics and Space Administration (NASA) Centers potentially affected by this rule, if promulgated, include those that generate or recycle hazardous secondary materials that are currently regulated as RCRA Subtitle C hazardous wastes, including the following:

- Byproducts
- Residues
- Unreacted feedstocks

Some examples of these types of materials include spent abrasive blast media or solvents.

Record Keeping and Reporting Requirements

The proposed rule includes a one-time notification requirement for generators of excluded secondary hazardous materials stating that the material is no longer covered under Subtitle C. Records of the notification must be maintained for 3 years. NASA Centers would be required to submit these notifications for the excluded secondary hazardous materials generated if EPA finalizes this requirement.

The proposed rule also includes the requirement that generators maintain records of shipments of excluded hazardous secondary materials to reclamation facilities for 3 years. These records would need to include the following for each shipment of excluded material:

- Documentation of when the shipment occurred
- Who the transporter was
- Name and address of the destination reclamation facility
- Type and quantity of the hazardous secondary material in the shipment

EPA has not proposed the use of a specific form or template for these records, or to require that they be maintained in a particular format (paper versus electronic records). If this requirement is finalized, NASA Centers will be required to maintain these records for their shipments of secondary hazardous materials.

Reasonable Efforts

The proposed rule would require generators to make “reasonable efforts” to ensure that their materials will be safely and legitimately recycled before shipping or transferring them to a reclamation facility. This rule would require the generator to perform a type of “environmental due diligence” of the reclaimer in advance. The generator can use any credible evidence available in making his reasonable efforts, including information gathered by the generator, provided by the reclaimer, and/or provided by a third party. NASA Centers would be required to do this for reclamation facilities to which they plan to send their secondary hazardous materials.

State Issues

EPA would authorize states to administer the non-waste determinations as part of their base RCRA programs. Because states are not required to implement federal requirements that are less stringent or narrower in scope than the state’s current requirements, authorized states are not required to adopt the non-waste determination processes. Should a state not adopt these regulations, there could be circumstances under which a material would be considered hazardous waste in one state and not in another. When such a material is transported into, out of, or through a more stringent state, the most stringent requirements will apply in terms of manifesting, transportation requirements, etc.

Requested Comments

EPA is specifically requesting comments regarding a number of issues that could affect NASA Centers, including the following:

- Definitions of the “generator’s facility,” “onsite,” and “same company”
- Types of contractual arrangements that should be included in the exclusion
- Additional requirements might be necessary to demonstrate the absence of discard of secondary materials eligible for the exclusion.
- Whether EPA Form 8700-12 should be expanded to include information for the one-time notification
- If additional notification information should be reported to EPA
- Whether there should be a conditional exclusion for exported material
- Whether generators should maintain confirmation of receipt of a material sent for reclamation, documentation of “reasonable efforts,” or a certification statement regarding “reasonable efforts”
- More specific provisions or questions to define “reasonable efforts,” along with a frequency for updating the information
- Whether the legitimacy determination should be linked to the “reasonable efforts”
- Whether a storage condition for the stored secondary material is needed
- The legitimacy determination codification and factors, as proposed, in addition to economics associated with them

- The petition process, as proposed
- The relationship between existing RCRA exclusions and the proposed exclusion
- RCRA corrective action and financial assurance for permittees who would have an excluded waste (if the proposed rule were promulgated)
- Modifying the RCRA biennial report to obtain information regarding the amount of excluded waste
- EPA policy regarding good practices pertaining to the recycling and management of hazardous secondary materials
- Performance measures for EPA and a means for obtaining this information

Comments regarding these issues are being collected by the Recycling and Affirmative Procurement PC for submittal on behalf of the NASA Centers. The RRAC PC also will be preparing comments to be included in the submittal.